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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	OEA Matter No.: 1601-0050-16AF19
RACHEL GEORGE,	)	
Employee	)	
	)	Date of Issuance: September 3, 2020
v.	)	
	)	
D.C. OFFICE OF THE ATTORNEY GENERAL,	)	MICHELLE R. HARRIS, ESQ.
Agency	)	Administrative Judge
	)	
	)	
	)	
	)	

David A. Branch, Esq., Employee Representative <sup>1</sup>  
Frank McDougald, Esq., Agency Representative

**SECOND ADDENDUM DECISION ON ATTORNEY FEES<sup>2</sup>**

**INTRODUCTION AND PROCEDURAL HISTORY**

On May 24, 2016, Rachel George (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Office of the Attorney General’s (“Agency” or “OAG”) decision to terminate her from service for failing a Performance Improvement Plan (PIP). Employee’s removal was effective April 25, 2016. On August 10, 2016, Agency filed its Answer to Employee’s Petition for Appeal. Following a two-day Evidentiary Hearing held February 27, 2018, and February 28, 2018, I issued an Initial Decision on October 22, 2018, reversing Agency’s action. Employee and Agency both filed Petitions for Reviews to the OEA Board (“Board”). On July 16, 2019, the Board issued its Opinion and Order (“O&O”) upholding the October 22, 2018 Initial Decision. On August 13, 2019, Agency filed a Petition for Review of Agency Decision to the Superior Court of the District of Columbia.

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<sup>1</sup> David A. Branch, Esq., entered his appearance on behalf of Employee in this matter on July 30, 2020. With regard to the previous filings before OEA, Employee was previously represented by two attorneys during the course of this matter before OEA. Her first attorney, Sara Safriet, Esq., withdrew her appearance on May 5, 2017. Her second attorney, William Dansie, Esq., withdrew his appearance on April 25, 2018, after the Evidentiary Hearing had been held in this matter.

<sup>2</sup> This decision was issued during the District of Columbia’s COVID-19 State of Emergency.

On August 15, 2019, Employee filed a Motion for Attorney Fees and Costs. On January 26, 2020, I issued an Addendum Decision on Attorney Fees and dismissed Employee's Motion as premature because the appeal was still pending before the Superior Court for the District of Columbia. On July 2, 2020, the Superior Court for the District of Columbia issued a decision denying Agency's Petition for Review and affirming the OEA Board's decision. On July 31, 2020, Employee filed a Motion for Attorney Fees. On August 19, 2020, Agency filed its Opposition to Employee's Motion, citing therein that Employee's Motion was premature because it had filed an appeal to the District of Columbia Court of Appeals.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether Employee's Motion for Attorney Fees should be dismissed as premature.

### ANALYSIS AND CONCLUSION

D.C. Official Code § 1-606.08(a), provides that an "[Administrative Judge] may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice." *See also* OEA Rule 634.1 59 D.C. Reg 2129 (2012). Here, the matter is pending before the District of Columbia Court of Appeals.<sup>3</sup> As a result, it has not yet been determined whether Employee is the prevailing party. Consequently, Employee's Motion for Attorney Fees is premature and should be dismissed without prejudice pending the final disposition of this matter.<sup>4</sup>

### ORDER

It is hereby **ORDERED** that Employee's Motion for Attorney Fees is **DISMISSED**.

FOR THE OFFICE:

/s/ Michelle R. Harris  
MICHELLE R. HARRIS, Esq.  
Administrative Judge

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<sup>3</sup> Agency's Opposition at Attachment 1 (August 19, 2020).

<sup>4</sup> Should Employee be determined as the prevailing party at the final disposition of this matter, she may resubmit her Motion for Attorney Fees.